



Board of Adjustment Case Report

City of Raleigh
Department of City Planning
One Exchange Plaza
Raleigh, NC 27601
(919) 996-2682
www.raleighnc.gov

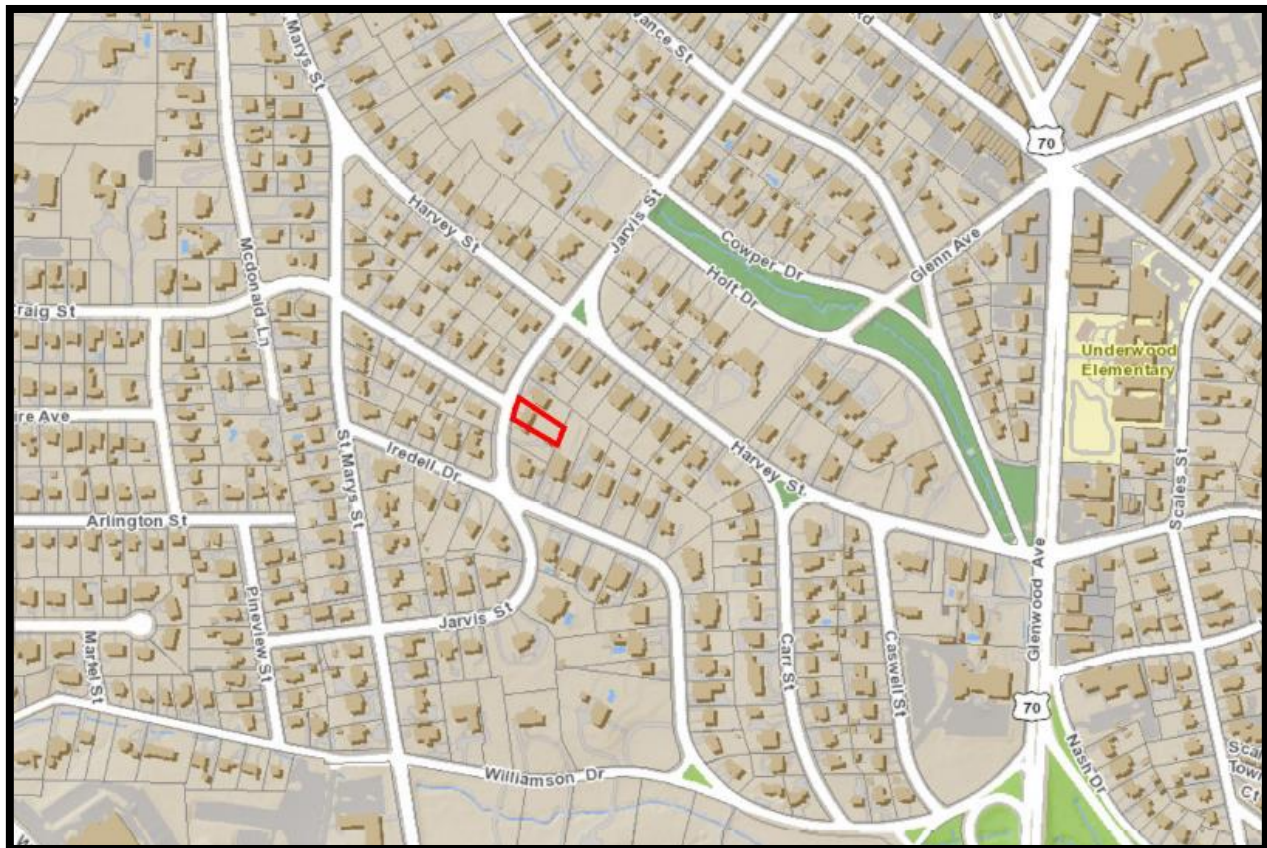
Case File: A-10-18

Property Address: 1604 Jarvis Street

Appellant: Thomas Graves, adjacent property owner

Project Contact: Chris Browning

Nature of Case: Thomas Graves, adjacent property owner, requests an appeal of the Official Zoning Code Interpretation known as UI-14-17 as it relates to whether or not the window-well at 1604 Jarvis Street constitutes a retaining wall or part of the building.

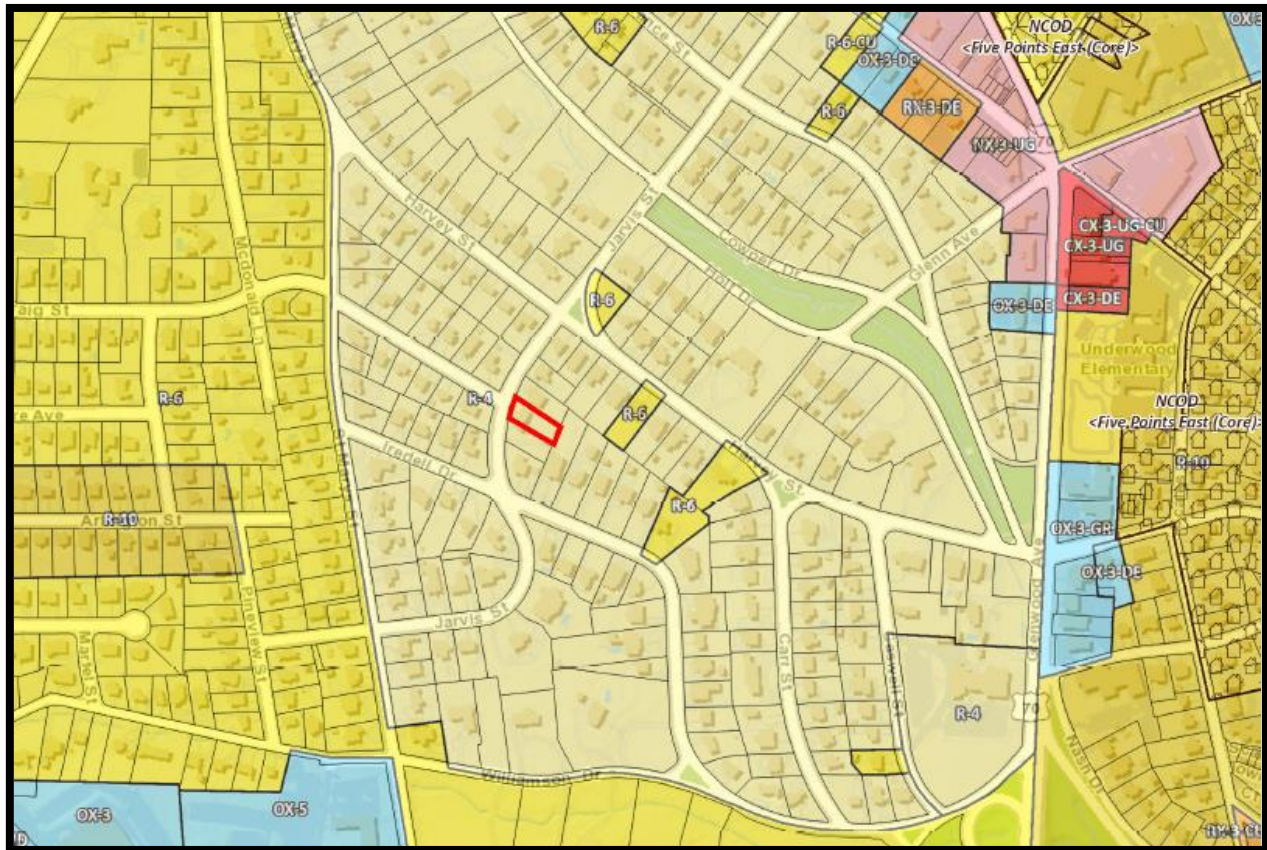


1604 Jarvis Street – Location Map

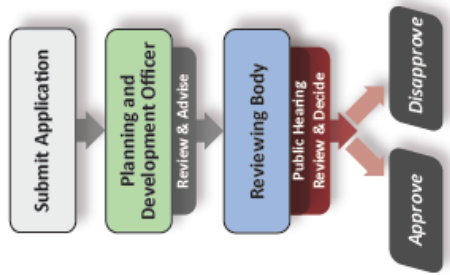
To BOA: 1-8-18

Staff Coordinator: Eric S. Hodge, AICP

**ZONING
DISTRICTS:** Residential-4



1604 Jarvis Street – Zoning Map



Sec. 10.2.11. Appeal of an Administrative Decision

A. Applicability

Any aggrieved person or any agency, officer, department, board or commission of the City, including the City Council, affected by any decision, order, requirement or determination relating to the interpretation, compliance or application of this UDO as made by an administrative official charged with the administration and enforcement of these provisions of the UDO may file an appeal in accordance with the requirements of this section.

B. Reviewing Body

Appeals of an administrative decision are heard by the Board of Adjustment except for Minor Work Certificates of Appropriateness, which are heard by the Raleigh Historic Development Commission.

C. Stay of Proceedings

1. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken (in most instances, this will be the Zoning Enforcement Administrator) certifies that, because of facts stated in the certificate, a stay would, in their opinion, cause imminent peril to life or property or that because the violation is transitory in nature, a stay would seriously interfere with the effective enforcement of this UDO. In that case, proceedings shall not be stayed except by a restraining order granted by of the reviewing body or a court, issued on application of the party seeking the stay, for due cause shown, with copy of notice to the officer from whom the appeal is taken.
2. An appeal shall not stop action lawfully approved; only actions claimed to be in violation of this UDO shall be stayed.

D. Filing Requirements

1. An appeal of any administrative decision shall be made by filing a written notice of appeal specifying the grounds for the appeal with the officer from whom the appeal is taken

and the reviewing body. Notice of appeal provided to the City Clerk is considered to be notice to the reviewing body.

2. Except when a different time period is established in this UDO, the notice of appeal shall be filed by persons who received either mailed notice or notice of decision pursuant to Sec. 10.2.1.C. within 30 days after the date of the application was decided; this time period is applicable to all representatives of such notified persons, including without limitation their tenants and option holders. For all other persons with standing, notice of appeal of any plot plan or site plan shall be filed within 30 days after the receipt from the earlier of any source of actual or constructive notice of the decision within which to file an appeal.
3. A notice of appeal of an administrative decision shall be considered made, when the notice of appeal is provided to the City Clerk and the officer from whom the appeal is taken. The date and time of filing shall be entered on the notice of appeal.
4. In addition to the notice of appeal, within 30 business days from the date of the notice of appeal, an application for an appeal of administrative decision shall be submitted to Planning and Development in accordance with Sec. 10.2.1.B.

E. Approval Process

1. Planning and Development Officer Action

- a. After notice of appeal is provided, the officer from whom the appeal is taken shall transmit to the reviewing body all the papers constituting the record upon which the action appealed from was taken.
- b. Planning and Development shall review the application for an appeal of an administrative decision in accordance with all applicable requirements of this UDO and advise the applicant.
- c. Planning and Development shall provide the notices required in Sec. 10.1.7. and Sec. 10.2.1.C.

2. Reviewing Body Action

Within 60 days after a completed application of an appeal of an administrative decision is filed, the reviewing body shall hold a quasi-judicial public hearing as set forth in Sec. 10.2.1.D.1. and provide notice as required in Sec. 10.2.1.C.6. Appeals filed to the City Manager shall not be heard at a quasi-judicial public hearing.

F. Showings

The showings for the reviewing body shall be those required for the original decision. The reviewing body may affirm or reverse the officer from whom the appeal is taken based on the applicable standards of this UDO.

Supp. No. 2

Part 10A: Unified Development Ordinance
City of Raleigh, North Carolina

10 – 45
Effective Date: September 01, 2013

eating areas, plazas, courtyards, fountains, active recreation areas or public art.

3. Amenity areas installed in conjunction with an apartment or townhouse building type may contain any of the amenities listed above in subsection D.2, as well as courts, pools or fields used for active recreation.
4. All required outdoor amenity areas must provide one linear foot of seating for each 50 square feet of required open space area and one two-inch caliper tree for every 1,000 square feet of required open space area.
5. For all buildings greater than 7 stories in height, the minimum amount of required open space area specified in chapter 3 shall be increased. An additional 50 square feet of amenity area is required for each building story above the seventh story. In no case shall the required amenity area exceed 12% of the gross site area.

Sec. 1.5.4. Building Setbacks

A. Setback Types

There are 4 types of setback – primary street setback, side street setback, side setback and rear setback. Through lots are considered to have 2 primary street setbacks.

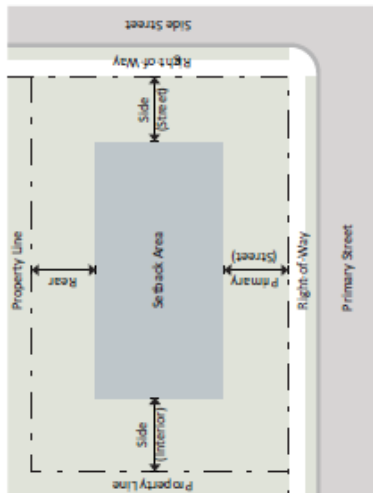
B. Measurement of Building Setbacks

1. Primary and side street setbacks are measured perpendicular from the edge of the existing or proposed right-of-way, whichever is greater.
2. Side setbacks are measured perpendicular from the side property line.
3. Rear setbacks are measured perpendicular from the rear property line or the edge of the existing or proposed right-of-way, whichever is greater, where there is an alley.

C. Multiple Street Frontage Lots

A multiple street frontage lot must designate at least 1 primary street. A lot may have more than 1 primary street. The Planning and Development Officer will determine which street or streets are the primary streets based on:

1. The street with the highest street classification;
2. The established orientation of the block;
3. The street abutting the longest face of the block;



4. The street parallel to an alley within the block; and
5. The street that the lot takes its address from.

D. Setback Encroachments

All buildings and structures must be located at or behind required setbacks, except as listed below. Underground structures covered by the ground may encroach into a required setback.

1. Building Features

- a. Porches (raised structures attached to a building forming a covered entrance) may extend up to 9 feet, including the steps, into a required setback, provided that such extension is at least 3 feet from the vertical plane of any lot line.
- b. Stoops (small raised platforms that serve as entrances to buildings) may extend up to 6 feet into a required setback, provided that the landing is at least 3 feet from the vertical plane of any lot line. Stoops may be covered but cannot be fully enclosed.
- c. Balconies (platforms projecting from the wall of a building with a railing along its outer edge, often accessible from a door or window) may extend up to 6 feet into a required setback, provided that the landing is at least 3 feet from the vertical plane of any lot line. Balconies can be covered but cannot be fully enclosed.

CHAPTER 1. INTRODUCTORY PROVISIONS | Article 1.5. Measurement, Exceptions & General Rules of Applicability
Sec. 1.5.5. Parking Setbacks

- d. Galleries (covered passages extending along the outside wall of a building supported by arches or columns that are open on 3 side), must have a clear depth from the support columns to the building's facade of at least 8 feet and a clear height above the sidewalk of at least 10 feet. A gallery may extend into a required street setback. A gallery may not extend into a required side setback.
 - e. Chimneys or flues may extend up to 4 feet, provided that such extension is at least 3 feet from the vertical plane of any lot line.
 - f. Building eaves, roof overhangs, awnings and light shelves may extend up to 5 feet, provided that such extension is at least 3 feet from the vertical plane of any lot line.
 - g. Bay windows, oriel, vestibules and similar features that are less than 10 feet wide may extend up to 4 feet, provided that such extension is at least 3 feet from the vertical plane of any lot line.
 - h. Unenclosed fire escapes or stairways may extend up to 4 feet into a required side or rear setback, provided that such extension is at least 5 feet from the vertical plane of any lot line.
 - i. Unenclosed patios, decks or terraces may extend up to 4 feet into a required side setback, or up to 8 feet into a required rear setback, provided that such extension is at least 5 feet from the vertical plane of any lot line.
 - j. Cornices, belt courses, sills, buttresses or other similar architectural features may project up to 1½ feet.
 - k. Handicap ramps may project to the extent necessary to perform their proper function.
 - l. If a variance is not required, a building feature may encroach into the right-of-way, provided a license for the use of the right-of-way is obtained from the City, which is terminable at will by the City.
2. **Mechanical Equipment and Utility Lines**
 - a. Mechanical equipment associated with residential uses, such as HVAC units and security lighting, may extend into a required rear or side setback, provided that such extension is at least 3 feet from the vertical plane of any lot line.
- b. Solar panels or wind turbines may extend into a required rear or side setback, provided that such extension is at least 3 feet from the vertical plane of any lot line.
 - c. Rainwater collection or harvesting systems may extend into a required rear or side setback, provided that such extension is at least 3 feet from the vertical plane of any lot line.
 - d. Utility lines located underground and minor structures accessory to utility lines (such as hydrants, manholes and transformers and other cabinet structures) may extend into a required rear or side setback.

E. Other Setback Encroachments

1. Fence and walls under Sec. 7.2.8.
2. Signs under Article 7.3. Signs.
3. Driveways under Sec. 8.3.5. Site Access.
4. Transitional and street protective yards under Sec. 7.2.4.

Sec. 1.5.5. Parking Setbacks

A. Parking Setback Types

There are 4 types of parking setback – primary street setback, side street setback, side setback and rear setback. Through lots are considered to have 2 primary street setbacks.

B. Measurement of Parking Setbacks

1. Primary and side street setbacks are measured perpendicular from the edge of the existing or proposed right-of-way, whichever is greater.
2. Side setbacks are measured perpendicular from the side property line.
3. Rear setbacks are measured perpendicular from the rear property line or the edge of the existing or proposed right-of-way, whichever is greater, where there is an alley.

C. Parking Not Allowed

On-site surface and structured parking must be located behind the parking setback line, where applicable. This requirement does not apply to on-street parking or apply to upper stories of a parking deck.

Supp. No. 4

1 – 14
Effective Date: September 01, 2013

Part 10A: Unified Development Ordinance
City of Raleigh, North Carolina

Sec. 7.2.8. Walls and Fences**A. Applicability**

The following requirements apply to walls and fences located outside of a protective yard or required screening area.

B. General Standards

1. Fences and walls must be constructed of high quality materials including 1 or a combination of the following: decorative blocks; brick; stone; cast-stone; architectural block; split-faced block; stucco over standard concrete masonry blocks; glass block; wood; wrought iron; composite fencing; wire; PVC vinyl; aluminum; metal or other material approved by the Planning Director.
2. No wall or fence can be located within any tree conservation area.
3. No wall or fence can be located within any City of Raleigh utility easement without prior written approval of the Director of Public Utilities.
4. No wall or fence can be located within any required drainage easement without prior written approval of the Public Works Director.
5. Barbed wire or concertina wire may be allowed in accordance with Sec. 13-301.1.
6. Except in an IH district, chain-link fences are not allowed in any front or side street setback.
7. The maximum length of a continuous, unbroken and uninterrupted fence or wall plane shall be 100 feet. Breaks shall be provided through the use of columns, landscaped areas, transparent sections or a change in material.
8. Except in an IH district, a wall or fence not more than 6 and one half feet in height may be located in a front or side street setback, provided the opacity of the wall or fence above 4 feet in height does not exceed 50%.
9. A wall or fence may not exceed 8 feet in height in a side or rear setback unless it is located adjacent to a street, in which case it may be no more than 6 and one half feet in height, provided the opacity of the wall or fence above 4 feet in height does not exceed 50%.

Cross reference: The Director of Public Utilities may approve structures within City of Raleigh utility easements, Sec. 8-202(d).

C. Fences and Walls Adjacent to Thoroughfares

1. A fence or wall located within 20 feet of a Thoroughfare right-of-way shall either be less than 42 inches in height or situated at least 15 feet from the edge of the right-of-way and be screened with evergreen planting materials, so that no more than one-fourth of the fence or wall surface area will be visible from the Thoroughfare within 3 years of erection of the fence or wall.
2. All fences and walls that are more than 42 inches in height and are located between 20 and 40 feet from any Thoroughfare right-of-way shall be installed with planting materials, so that no more than one-third of the fence or wall surface area will be visible from the Thoroughfare within three years of erection of the fence or wall. 40% of this plant material may be deciduous. Decorative fences that are more than 50% open shall be exempt from these provisions.

D. Retaining Walls

Retaining walls that are located within 30 feet of a public sidewalk shall be required to adhere to the following.

1. A retaining wall may not exceed a continuous, uninterrupted height of 15 feet. Additional height may be permitted, provided the wall contains a 2-foot step back for each 15 feet of wall height.
2. This regulation shall not apply to walls associated with culverts or stream crossings or to transportation improvements, such as bridge overpass structures for streets or railroads.

Appeal of Administrative Decision Application



RALEIGH
DEPARTMENT OF
CITY PLANNING



Department of City Planning | 1 Exchange Plaza, Suite 300 | Raleigh, NC 27601 | 919-996-2626

Nature of appeal (If more space is needed, submit addendum on separate sheet):

Appeal from written interpretation of the Unified Development Ordinance by the Interim Zoning Administrator in UI-14-17. Appellant's request for a written interpretation concerns whether the window well at 1604 Jarvis Street, which is a portion of the building structure, constitutes a retaining wall. The building structure encroaches on the UDO's side setback area.

Provide all previous transaction numbers for Coordinated Team Reviews, Due Diligence Sessions or Pre-Submittal Conferences in the spaces below. If this property was the subject of a previous Board action, provide the case number.

OFFICE USE ONLY

Transaction Number

A-10-18

n/a - This appeal concerns UI-14-17.

GENERAL INFORMATION

Property Address 1604 Jarvis Street, Raleigh, NC 27608 Date 11/15/2017

Property PIN 1704363924

Current Zoning R-4

Nearest Intersection Jarvis and Craig

Property size (in acres) 0.25

Property Owner Information

Property Owner DJF Builders, Inc.

Phone (919) 363-1700 Fax (919) 363-4005

Owner's Mailing Address 2716 National Dr., Suite 122, Raleigh, NC 27612

Email info@djfbuilder.com

Contact Person Information

Project Contact Person Dennis J. Fitzgerald

Phone (919) 363-1700 Fax (919) 363-4005

Contact's Mailing Address DJF Builders, Inc., 2716 National Dr., Suite 122, Raleigh, NC 27612

Email info@djfbuilder.com

Property Owner Signature n/a - This is an appeal by adjacent owner.

Email n/a

See next page for signature of Appellant.

Appeal of Administrative Decision Application



RALEIGH
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CITY PLANNING



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APPELLANT'S INFORMATION

GENERAL INFORMATION		
Property Address of Appellant Thomas W. Graves, Jr. - 1608 Jarvis St, Raleigh, NC 27608		Date 11/15/2017
Appellant's PIN = 1704373040		Current Zoning Appellant's Current Zoning = R-4
Nearest Intersection Jarvis and Craig		Property size (in acres) Appellant's Approximate Property Size = 0.5 acres <i>0.29 (ZERO POINT TWO NINE) ACRES</i>
Property Owner Information		
Appellant's Name = Thomas W. Graves		Phone (919) 834-4144 Fax n/a
Appellant's Mailing Address = 1608 Jarvis St, Raleigh, NC 27608		Email duketwg@aol.com
Contact Person Information		
Project Contact Person Appellant's Counsel = Chris Browning		Phone (919) 835-4127 Fax (919) 835-4101
Contact's Mailing Address Troutman Sanders LLP, P.O. Drawer 1389, Raleigh, NC 27602		Email chris.browning@troutman.com
Appellant's Signature <i>Thomas W. Graves</i>		Email <i>DUKETWG@aol.com</i>
Notary Sworn and subscribed before me this <u>15</u> day of <u>November</u> , 20 <u>17</u>		Notary Signature and Seal <i>Yelena Zvereva</i>

**BEFORE THE BOARD OF ADJUSTMENT
APPEAL OF UI-14-17**

In Re Appeal of Thomas W. Graves, Jr.
from the Written Interpretation of the Unified
Development Ordinance of the Interim
Zoning Administrator

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NOTICE OF APPEAL

TO: Board of Adjustment for the City of Raleigh,
By Service through the Raleigh City Clerk,
Raleigh Municipal Building,
222 W. Hargett St. (Second Floor)
Raleigh, NC 27601

Travis Crane
Interim Zoning Administrator
City of Raleigh
One Exchange Plaza
Raleigh, NC 27601

Thomas W. Graves, Jr., by and through his Attorney-in-Fact and legal counsel, hereby gives Notice of Appeal from the written interpretation of the Raleigh Unified Development Ordinance ("UDO") in Matter Number UI-14-17. The notice of the written interpretation that is the subject of this appeal was posted on the property and mailed to Mr. Graves on or after October 24, 2017. A copy of the Written Staff Interpretation is attached hereto.

Mr. Graves stands as an aggrieved person. He owns and lives at 1608 Jarvis Street which is adjacent to the property (1604 Jarvis Street) that is the subject of Mr. Graves' request for a written interpretation of the UDO. The erroneous interpretation of the UDO by the Interim Zoning Administrator allows the building at 1604 Jarvis to infringe on the UDO's side setback requirements, resulting in that building being less than 10 feet from Mr. Graves' property line. The infringing structure (a window well) does not constitute a retaining wall within the common

understanding of that phrase. The staff's expansive interpretation of the phrase "retaining wall," which is not defined by the UDO, would create a loophole that would eviscerate the UDO's setback requirements. The window well in such close proximity to Mr. Graves' property directly and uniquely harms Mr. Graves. Moreover, the window well built within the side setback stands as an attractive nuisance and is a threat to children staying at or visiting Mr. Graves' home.


The grounds for this appeal are as follows:

1. The staff interpretation is in error and should be reversed by the Board in that it allows a portion of a building structure to unlawfully encroach on the setback provisions mandated by the UDO.
2. The staff interpretation is in error and should be reversed by the Board in that the window well at issue does not constitute a "retaining wall" as that term is used in the UDO.
3. The staff interpretation is in error and should be reversed by the Board in that the interpretation creates a loophole that is not consistent with the intent of the UDO and would allow building structures within side setback areas.

Contemporaneous with the filing of this Notice of Appeal, Mr. Graves has delivered to the City Clerk stamped envelopes addressed to all property owners within 100 feet of the subject property (1604 Jarvis Street) and has tendered to the City of Raleigh all requisite filing fees.

WHEREFORE, Appellant Thomas W. Graves, Jr. prays that the Board set aside and reverse the staff interpretation in this matter and declare that the building structure at 1604 Jarvis Street violates the UDO and is unlawful.

This the 15th day of November, 2017.



Thomas W. Graves, Jr.
1604 Jarvis Street
Raleigh, NC 27608



Christopher G. Browning, Jr.
Attorney-in-Fact and Counsel for Mr. Graves
N.C. State Bar No. 13436
Troutman Sanders, LLP
Post Office Drawer 1389
Raleigh, North Carolina 27602-1389
Telephone: (919) 835-4127
chris.browning@troutmansanders.com

Official Zoning Code Interpretation



RALEIGH
DEPARTMENT OF
CITY PLANNING



Department of City Planning | 1 Exchange Plaza, Suite 300 | Raleigh, NC 27601 | 919-996-2626

Requested Interpretation		Case Number
<p>Issues: (1) Whether a window well that is connected to a building structure constitutes a retaining wall within the meaning of the UDO and (2) Whether the property at 1604 Jarvis complies with the City's side setback requirements.</p> <p>Applicable UDO Sections: 1.5.4; 7.2.8</p> <p>Background: DJF Builders is currently constructing a house on property that it owns at 1604 Jarvis Street. This property is adjacent to the home of Mr. Graves. DJF Builders has built a window well that may be within the side setback requirements of UDO § 1.5.4. This window well is part of the structure of the house and is connected to and is an integral part of the foundation and walls of that house. The window well rises above ground level and is not a free-standing structure. Although the UDO does not appear to define "retaining wall," Encyclopedia Britannica defines "retaining wall" as a "freestanding wall that either resists some weight on one side or prevents the erosion of an embankment." www.britannica.com/technology/retaining-wall Moreover, the term "retaining wall" is most often used to refer to "a freestanding structure without lateral support from its top." James E. Ambrose, SIMPLIFIED DESIGN OF MASONRY STRUCTURES 70 (1991). Here, the window well is part of the structure of the house and provides lateral support to the house. It is not freestanding. Accordingly, the window well does not constitute a retaining wall within the meaning of UDO § 7.2.8. Additional details are set out in correspondence of Chris Browning to Gary Mitchell (8/29/17).</p>		UI-14-17
Site Address/PIN: 1604 Jarvis Street		
Date Submitted: August 14, 2017	Date Issued: October 20, 2017	Code Sections Affected: 1.5.4; 7.2.8

STAFF ANALYSIS

The applicant has asked about the certain building elements associated with a property currently under construction at 1604 Jarvis Street. The applicant has asked whether or not a window well constitutes a retaining wall and whether or not the subject property complies with the applicable setback regulations. The UDO contains setbacks assigned by building type and zoning district. In this specific instance, the subject property is zoned Residential-4 and the property owner is constructing a detached building. The UDO requires that a detached building meet front, side and rear yard setbacks. In the R-4 district, the minimum required front setback for a detached structure is 20 feet; the minimum required rear setback is 30 feet and the minimum required side yard setback is 10 feet. The front yard setback may be modified if the development qualifies as residential infill as stated in section 2.2.7.

The primary focus of this inquiry is related to the side yard setback; specifically on the northern elevation. The applicant has requested an interpretation of the window well on the northern (side) property line. The approved building plans do not show the window wells or a dimension from the northern property line to any of the window wells; although the building wall is shown at approximately 11 feet from the northern property line. City staff did perform a property visit to investigate the questions raised by the applicant. While the staff did not survey the property to accurately locate the property lines, they did utilize property stakes that appeared to mark the property line. In staff's estimation, the closest edge of the window wells was approximately 8 feet from the northern property line.

The applicant has asked whether or not the window wells constitute a retaining wall, as defined in section 7.2.8 of the UDO. The term "retaining wall" is mentioned a number of times within the UDO, including in section 7.2.8, article 7.3, article 9.1 and article 12.2. It is not a defined term in the UDO. The property at 1604 Jarvis contains one protruding portion of the building façade on the northern wall. This protruding element was shown on the approved plot plan, located outside of the required side yard setback.

STAFF INTERPRETATION

A window well serves a purpose to retain earthen material for windows that are partially or wholly below the finished grade of a building. A subgrade window provides light into the living space. It also provides a means of egress in the event of an emergency, similar to a fire escape for upper story windows. Staff did not provide a structural analysis of the window wells in an effort to support or refute the applicant's claim that the walls are a structural component of the house. The window well appears to be constructed in a manner where the building façade and window well masonry units touch. The window well masonry units do not appear to be constructed in a manner that makes the window well an integral part of the house structure. In fact, during staff's site analysis, it appeared that some of the window well masonry units were not touching the building façade. Staff does not believe that the absence of the window well would cause the façade of the structure to fail. Given that presumption, it is difficult to consider the window well a part of the structure. Staff would not consider the window wells to be a part of the house in the same way that decorative wall that abuts the wall

of a structure is not a part of the structure. It is important to note that this window well is mostly subterranean, with only a small amount extended above the finished grade.

In reviewing the second question posed by the applicant, staff did not perform a boundary survey, and did not review the entirety of the construction improvements for conformance with the applicable code standards. Only the southern portion of the building façade was analyzed. Accurately identifying the property lines and identifying the position of the structure relative to those property lines would provide the most accurate results. In staff's analysis, it appears that the structure is constructed in a manner consistent with the approved plot plan. Given the opinion that the window well is not a part of the structure, staff does not believe that there is an encroachment on the northern property line.

SIGNATORY



Travis R. Crane, Assistant Planning Director & Interim Planning and Zoning Administrator

Record Owners Within 100 Feet of Subject Property

Record Owner	Mailing Address
Samuel L. Harris and wife, Ellen Olender Harvin	1612 Jarvis St., Raleigh, NC 27608-2213
Marguerite M. Silver	1025 Harvey St., Raleigh, NC 27608-2331
Brandon K. Shepherd and wife, Natalia N. Luckyanova	1021 Harvey St., Raleigh, NC 27608-2331
Whitney White Zinner	1548 Iredell Dr., Raleigh, NC 27608-2303
Gerald A. Jeutter, Jr., and wife, Michelle Jeutter	1550 Iredell Dr., Raleigh, NC 27608-2303
Patricia L. Holland	1552 Iredell Dr., Raleigh NC 27608-2303
DJF Builders, Inc.	3716 National Dr., Suite 122, Raleigh, NC 27612-4863
Adam J. Barlow and wife, Alison E. Weaver	1600 Iredell Dr., Raleigh, NC 27608-2207
Gerald B. Sibrack and wife, Mary H. Sibrack	1601 Craig St., Raleigh, NC 27608-2201
Pressly M. Millen and wife, Siobhan O'Duffy Millen	1600 Craig St., Raleigh, NC 27608-2202
Sara Graves and Thomas W. Graves, Jr.	1608 Jarvis St., Raleigh, NC 27608